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No. 84-1075

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ST. LOUIS COUNTY, MISSOURI,
Petitioner,

vs.

CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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STATEMENT OF CASE

The Statement of the Case appearing at pp. 2-3 of the Petition for Writ of Certiorari is incomplete and confusing.[1] The background facts of the claims of the plaintiff against Judge Corrigan and the Circuit Court are set out in the Memorandum Opinion of the District Court, pp. A-2 to A-7 of the Appendix.

The basic facts relevant to the third-party petition by the Circuit Court against St. Louis County, as found by the District Court, are recited in Section B of the Memorandum Opinion of the District Court, pp. A-7 to A-8.

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[1] Petitioner has interchanged the two counts in its discussion on p. 3. Count I was the claim against the Circuit Court, based on its alleged violation of Title VII of the Civil Rights Act of 1964. Count II was against Judge Corrigan and was founded on 42 U.S.C. §1983.

REASONS WHY THE WRIT SHOULD BE DENIED

Respondent respectfully submits that the Court should deny this Petition for Certiorari. The ruling about which Petitioner complains derives solely from, and is determined by, Missouri law. Petitioner concedes that it is the sole funding source of the Circuit Court[2] and that it is obligated to pay all lawful expenses of the Court. That concession reflects well settled Missouri statutory and common law. It was on this basis that the District Court held, and the Court of Appeals affirmed, that judgment on the third-party claim by the Circuit Court against St. Louis County was essential in order to permit the fashioning of a meaningful remedy for the plaintiff.

This case is clearly appropriate for the application of the doctrine of this Court that "standing alone, a challenge to state-law determinations by the Court of Appeals will rarely constitute an appropriate subject of this Court's review. Supreme Court Rule 17." *Haring v. Prosise*, ____ U.S. ____, 76 L.Ed.2d 595, 604, n. 8, 103 S.Ct. ____ (1983).

Respondent herewith comments briefly on the contentions raised by Petitioner.

1. The Nature Of The Judgment.

To avoid the impact of the governing principles of Missouri law, Petitioner has attempted to recast this cause into the mold of a traditional case of indemnity. Thus, Petitioner complains that the Circuit Court, as 'wrongdoer' is being insulated from liability and asserts that "The Eighth Circuit, through its novel and erroneous interpretation of state law, transferred liability to the County thus indemnifying the Circuit Court." Petition, p. 4. Petitioner has totally misconceived the basis of the third-

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[2] The exceptions to this principle are not relevant herein.

party proceedings herein and is itself in error in its contention that the Eighth Circuit has misinterpreted state law. Respondent has not escaped liability and Petitioner is not being saddled with vicarious liability.

The essence of the rulings below is that the judgment against Petitioner was necessary to provide an adequate remedy to the plaintiff. The Circuit Court is entirely dependent on the Petitioner for funding. The Court has no funds for its operations other than those appropriated by Petitioner. Plainly and simply, the plaintiff could not enforce her judgment against the Circuit Court unless the County makes available the necessary funds.

The Circuit Court's dependence on Petitioner for funding is expressly called for by the provisions of §476.270, RSMo, which state:

> "All expenditures accruing in the circuit courts,. . .shall be paid out of the treasury of the county in which the court is held in the same manner as other demands."

The case law is in accord. As characterized in *In Re 1979 Budget of the Juvenile Court of St. Louis County,* 590 S.W.2d 900, 903 (Mo. banc 1979):

> "The Circuit Court does not have power to levy taxes in order to defray expenses necessary to perform its judicial functions. The taxing power is in the County....It is the County which must supply the funds."

Petitioner's suggestion that this case must be governed by federal law regarding indemnification is erroneous. The issue presented is which entity of state government is required to provide funds to satisfy a judgment against the Circuit Court. In our federal system, that determination is necessarily one of state law.

The authorities cited by Petitioner are irrelevant. In none of these cases did the Courts consider which entity of state govern-

ment should be responsible for satisfying a judgment rendered against another entity which has no taxing power.

Parenthetically, action by the Missouri legislature since the date of judgment herein may well have mooted the issue attempted to be raised by Petitioner. Section 105.711, Laws of Missouri 1983, creates a 'state legal expense fund' which provides funds for the payment, inter alia, of a money judgment rendered against any officer or agency of the State of Missouri by a court of competent jurisdiction. Under these circumstances, the time of this Court should not be devoted to a contention which may well have no precedential significance.

2. **The District Court's Authority To Fashion A Remedy Under Title VII.**

The language of Title VII provides broad authority to the District Court to remedy a violation. In such circumstances:

> "The court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate....*or any other equitable relief as the court deems appropriate.*"

42 U.S.C. §2000e-5(g) (emphasis added). 42 U.S.C. §2000e-5(k) includes an award of reasonable attorney's fees as part of the District Court's authority.

This Court has held that the District Court's authority under Title VII is entitled to a broad construction:

> "The terms 'complete justice' and 'necessary relief' have acquired a clear meaning in such circumstances. Where racial [or sexual] discrimination is concerned, the district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future...

> The 'make whole' purpose of Title VII is made evident by the legislative history. . . . 'The provisions of this subsection are intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible.' "

Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-21 (1975). *Accord, International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 364-65 (1977).

In entering judgment in favor of the Circuit Court on its third-party complaint, the District Court did no more than exercise that broad discretion.

Had Petitioner not been brought into the instant cause, the judgment in favor of Plaintiff would clearly have been, as described by the District Court, a nullity. The only other course which the Circuit Court could have followed would have been to include funds to satisfy the judgment in its next annual budget submitted to Petitioner. Petitioner assuredly would have contested same and would have sought review both by the Judicial Finance Commission of the State of Missouri and the Supreme Court of Missouri, as provided by Sections 50.640 and 477.600, RSMo.

The time delays consumed by such efforts would not have been justifiable. Moreover, neither the administrative agency nor the Missouri Supreme Court would have been subject to the statutory directive, embodied in Title VII, to render a meaningful decree which would fashion the most complete relief possible.

CONCLUSION

As the entity which constitutes the sole funding source for the payment of the Circuit Court's expenses, it is patently essential that Petitioner be held obligated to provide the funds to satisfy the judgment rendered in favor of plaintiff against the Circuit Court. This conclusion is dictated by State law. The entry of judgment against Petitioner was well within the discretion of the District Court. The issue attempted to be raised by Petitioner is wholly inappropriate for review by this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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